S. HRG. 100-407

NOMINATION OF ALAN F. HOLMER AND O. DONALDSON CHAPOTON

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

NOMINATION OF

ALAN F. HOLMER, TO BE DEPUTY U.S. TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR, AND O. DONALDSON CHAPOTON, TO BE AN ASSISTANT SECRETARY OF THE TREASURY

SEPTEMBER 30, 1987

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NOMINATION OF ALAN F. HOLMER, TO BE DEPUTY U.S. TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR; NOMINATION OF O. DONALDSON CHAPOTON, TO BE AN ASSISTANT SECRETARY OF THE TREASURY

WEDNESDAY, SEPTEMBER 30, 1987

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10 a.m. in room SD-215, Dirksen Senate Office Building, Hon. Lloyd Bentsen (chairman) presiding.

Present: Senators Bentsen, Matsunaga, Moynihan, Baucus, Rockefeller, Daschle, Packwood, Danforth, Chafee, Heinz, Wallop, and Durenberger.

[The press release announcing the hearing follows:]

COMMITTEE ON FINANCE
United States Senate
205 Dirksen Building
Washington, D.C. 20510

PRESS RELEASE #H-64

FOR IMMEDIATE RELEASE
September 25, 1987

COMMITTEE ON FINANCE ANNOUNCES HEARING TO REVIEW NOMINATIONS OF HOLMER AND CHAPOTON; MARKUP OF MEAGHER NOMINATION

Washington, D.C. -- Senator Lloyd Bentsen (D., Tex.), Chairman, announced Friday that the full Committee will hold a hearing to review the nominations of Alan F. Holmer, of Virginia, to be a Deputy United States Trade Representative, with the rank of Ambassador, and O. Donaldson Chapoton, of Texas, to be an Assistant Secretary of the Treasury. Holmer currently serves as General Counsel in the Office of the U.S.T.R. Chapoton is presently the Acting Assistant Secretary of the Treasury (Tax Policy).

The hearing will be held on Wednesday, September 30, 1987 at 10:00 a.m. in Room SD-215 of the Dirksen Senate Office Building.

In addition, Senator Bentsen announced that the Committee will meet in markup session to consider reporting the nomination of John K. Meagher to be Deputy Under Secretary of the Treasury for Legislative Affairs. The Committee held a hearing on the Meagher nomination on September 25.

The hearing on the Holmer and Chapoton nominations will be interrupted for the markup on the Meagher nomination when a quorum is present.

- 30 -

ALAN F. HOLMER

7714 Falstaff Court
McLean, Virginia 22102

(703) 356-5263 (Residence)
(202) 395-3150 (Office)

EMPLOYMENT:

1985-Present OFFICE OF THE U.S. TRADE REPRESENTATIVE

General Counsel

Principal legal adviser to the United States Trade Representative with respect to domestic and international trade matters. Primary substantive responsibilities within the Office of the USTR include: legislative proposals; international dispute settlement issues; Section 301 investigations; and litigation in which the agency is involved.

1983-1985 COMMERCE DEPARTMENT

Deputy Assistant Secretary for Import Administration

Responsible for administering U.S. antidumping and countervailing duty laws, voluntary restraint agreements on steel imports, foreign trade zones, and statutory import programs. Represented the United States in international negotiations and the Department of Commerce before congressional committees, interagency groups and private interests.

1981-1983 THE WHITE HOUSE

Deputy Assistant to the President for Intergovernmental Affairs

Responsible for day-to-day management of office that serves as President Reagan's liaison with approximately 60,000 state and local officials nationwide. Ensured that views of state and local officials were considered in Presidential and other Administration decisions. Attended White House senior staff and Cabinet meetings.

Served as President's surrogate to state and local interest groups. Responsible for formulation and drafting of President's Federalism Initiative.

1978-1981 STEPTOE & JOHNSON

Attorney

Wide-ranging practice in Washington's second-largest law firm. Representation included corporate, tax, administrative, and international trade issues.

1972-1978 SENATOR BOB PACKWOOD (Washington, D.C.)

Administrative Assistant

As Senator Packwood's Chief of Staff, had overall responsibility for managing and directing his staff in Washington, D.C. and Oregon. Frequently served as surrogate for the Senator, representing him before interest groups.

EDUCATION

J.D., 1978 Georgetown University Law Center
A.B., 1971 Princeton University (cum laude)

MISCELLANEOUS

-- Member, District of Columbia, Oregon and American Bar Associations.

-- Guest lecturer at American University, Cornell University, Duke University, Harvard University, Michigan Law School, Princeton University, University of Virginia, and Willamette University.

-- Alternate Member, Advisory Commission on Intergovernmental Relations, 1981-83.

-- Honorary Council Member, American Bar Association Section of International Law and Practice

PERSONAL

Date of Birth: July 24, 1949

Health: Excellent

Marital Status: Married to the former Joan Ozark of Minneapolis, Minnesota. She is a tenured Associate Professor in Georgetown University's English Department.
Two children: Scott and Joy.

Senate Finance Committee Outline of Information Requested

A. BIOGRAPHICAL:

1.	Name:	O. Donaldson Chapoton
2.	Address:	16 Kalorama Circle, NW Washington, DC 20008 Department of the Treasury, Room 3120 1500 Pennsylvania Avenue, NW Washington, DC 20220
3.	Date and place of birth:	May 18, 1936; Galveston, TX
4.	Marital status:	Married, Mary Jo Kelley Chapoton,
5.	Names and ages of children:	Kelley Wayman Chapoton, age 11 Hunt Donaldson Chapoton, age 8
6.	Education:	Washington & Lee University, 1954-55, no degree; University of Texas School of Business Administration, 1955-57, BBA granted 1958; University of Texas School of Law, 1957-60, LLB granted 1960; Georgetown University School of Law, 1962-63, no degree
7.	Employment record:	Law Clerk to Fifth Circuit Court of Appeals Judge John R. Brown, Federal Court House, Houston, TX, 9/1960-8/1961; U.S. Army Captain in Judge Advocate General's Corps, The Pentagon, Charlottesville, VA, Fort Lee, VA, 9/1961-10/1963; Attorney at Baker & Botts, Houston, TX, 10/1963-5/1986
8.	Government experience:	Deputy Assistant Secretary (Tax Policy), Department of the Treasury, 5/1986-7/1987; Acting Assistant Secretary (Tax Policy), Department of the Treasury, 8/1987-present
9.	Memberships:	Professional: Baker & Botts Law Firm, Senior Partner American Bar Association Texas Bar Association Houston Bar Association

Business:
Tejas Breakfast Club

Civic:
Houston Ballet Foundation, Vice President
Cultural Arts Council of Houston

Social:
Houston Country Club, Vice President
Texas Corinthian Yacht Club
Bayou Club of Houston
Fishers Island Club
The Argyle
Pan Texas Assembly
Allegro
Hay Harbor Club
Athletic Club of Houston
Houston Metropolitan Racquet Club
Bachelors Club of Houston, President

Fraternities:
Delta Tau Delta
Phi Delta Phi

10. Political affiliations and activities:

George Bush's senatorial campaigns in 1964 and 1970
John Tower's senatorial campaign in 1966
Reagan/Bush presidential campaign in 1980

I have made numerous contributions over the past 10 years to Republican candidates and party organizations. Though I have no ready listing of such contributions due to their number and the period of time involved, I will attempt to reconstruct or recall any particular contributions should the Committee request it.

11. Honors and awards:

Order of the Coif
Chancellors

12. Published writings:

While in law school I authored several case notes and a comment for the Texas Law Review.

United States
Office of Government Ethics
P.O. Box 14108
Washington, D.C. 20044

SEP 22 1987

Honorable Lloyd Bentsen
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Chairman Bentsen:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Alan F. Holmer, who has been nominated by President Reagan for the position of Deputy U.S. Trade Representative.

We have reviewed the report and have also obtained advice from the Office of the U.S. Trade Representative concerning any possible conflict in light of the Agency's functions and the nominee's proposed duties. Based thereon, we believe that Mr. Holmer is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Donald E. Campbell

Donald E. Campbell
Acting Director

Enclosure

United States
Office of Government Ethics
P.O. Box 14108
Washington, D.C. 20044

SEP 25 1987

Honorable Lloyd Bentsen
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Chairman Bentsen:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by O. Donaldson Chapoton, who has been nominated by President Reagan for the position of Assistant Secretary for Tax Policy at the Department of the Treasury.

Mr. Chapoton has executed a recusal statement by which he agrees to recuse himself from any particular matter involving his former law firm, Baker & Botts, and any other entity in which he has a financial interest.

We have reviewed the report and have also obtained advice from the Department of the Treasury concerning any possible conflict in light of the Department's functions and the nominee's proposed duties. Based thereon, we believe that Mr. Chapoton is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Donald E. Campbell

Donald E. Campbell
Acting Director

Enclosure

The CHAIRMAN. Ladies and gentlemen, it is 10 o'clock. We try to start on time around here.

This hearing, of course, is to examine the President's nomination of Mr. Alan Holmer to be Deputy U.S. Trade Representative. This Committee has always held the Deputy U.S. Trade Representative position to be one of the most important positions in the trade bureaucracy. One of these Deputies runs our small office at the GATT, in Geneva, the other two work out of the Washington office. These are really the field commanders of the U.S.T.R, and this Committee has always expected a lot of them. And you can see the high regard with which you are held, Mr. Holmer, when the ranking member of this Committee chooses to sit there beside you and give his moral and political support. We are delighted to have him here, and so I now defer to my very highly regarded and respected colleague, Senator Packwood.

Senator PACKWOOD. Mr. Chairman, thank you.

It is not very often you get to introduce a nominee and say I have known him since he was that high, but, literally, I have known Alan since he was two or three years of age. His father, Freeman, was one of my principal political science teachers at Willamette University. It is a small university, and a small department, and Freeman used to have the students there from time to time. And I met Alan as a very, very young boy. I thought well of his father all through his father's career. As a matter of fact, his father was the budget director for eight years of the State of Oregon when Mark Hatfield was Governor and we know the significance of the position of a budget director in any governmental organization.

In 1970, Alan was a junior at Princeton—and we all have intern programs, of course—and Alan came and joined me as an intern that summer. I discovered to my pleasure that he was an extraordinary thinker and writer. I am not sure which is in shorter supply, but he is good at both. When he graduated from Princeton the following year, he came to my staff as a full-time legislative assistant. He was so good that in eight months, when he was only 22, he became my administrative Assistant, the youngest I have ever had, probably the youngest I ever can conceivably have. He stayed in that position for six years, went to night school at Georgetown Law School at the same time, graduated very successfully from Georgetown. Then I lost him to the private sector in 1978, as we all do with many of the bright young people that we have. But he came back with the Administration as a Deputy Assistant to the President for Intergovernmental Affairs in 1981, moved over to Commerce as Deputy Assistant Secretary for Import Administration in 1983. But where we, of course, have gotten to know him quite well—not me, but the rest of the Committee—was when he went to U.S.T.R. as General Counsel in 1985. And he has sat here with Ambassador Woods day after day after day as we were going through the markup on the trade bill. And I remember, Mr. Chairman, your wonderful comment about refering to Alan as "that young man"—and he still is that—and you said, "That young man has the capacity to disagree without being disagreeable." And indeed he does.

I have known Alan all of his life, but his wife, Joan, at least since 1971 or 1972; their children, Scott and Joy. They have all been in our house, and my wife and I have been in their house. I cannot think of a person that I have known longer in my experience in the Senate or that I admire more or that I think the Government is luckier to have than Alan Holmer. And I am delighted to be able to present him to the Committee formally this morning.

The CHAIRMAN. Well, Senator Packwood, that is a very strong recommendation, and obviously you know the man well, and that certainly has substantial influence on this Committee. I defer to my colleague from New York for any comments he might want to make. Senator Moynihan.

Senator MOYNIHAN. Yes, Mr. Chairman. In view of Mr. Packwood's statements, I think we should take the nomination under consideration. [Laughter.]

And I congratulate Senator Packwood on having obtained the services of Mr. Holmer. Mr. Holmer, we congratulate you, sir.

Mr. HOLMER. Thank you, Senator.

The CHAIRMAN. Mr. Holmer, we would be glad to listen to any statement you want to make at this time.

STATEMENT OF ALAN F. HOLMER, TO BE DEPUTY U.S. TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR

Mr. HOLMER. Unlike most of the times that I have come before this committee, I have no prepared statement. I have a very brief oral statement I would like to make.

The CHAIRMAN. All right.

Mr. HOLMER. One thing that Senator Packwood has taught me—and he has taught me a lot—is that loyalty in any organization doesn't run just from the bottom up. It also runs from the top down. And I will always be very grateful for that, Senator, and also for your excessively generous introduction this morning.

Senator Packwood was certainly right about the chronology of my career. And the chronology is that I was raised from a pup right here in the United States Senate. For me, the seven years I spent as a Senate staffer during my early to mid 20s, those were enormously formative years for me, and that experience has helped to shape my perspective—permanently—on the need for a true and meaningful partnership between the Congress and the Executive Branch on the making of U.S. trade policy and on the implementation of that policy.

It is a great honor for me to have been nominated for this position. I understand and appreciate the special relationship between the Senate Finance Committee and the Office of U.S. Trade Representative, and, if confirmed, it would be a great privilege for me to continue to work with the Committee in this new capacity. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Holmer, I can well understand with your experience on the Hill that during this trade bill and the conferences on it that you will be using a lot of your time in communications with us. And I hope that the Administration chooses to work closely with us in the conference, to be a part of the process, to make a

contribution. We would like to know the Administration's point of view.

We have repeatedly conferred with Mr. Yeutter, with Secretary Baker, and formerly with Secretary Baldrige. There will be a lot of changes made because of conflicts between the Senate version and the House version. Things have to be dropped; things have to be modified. But we want that kind of input in the process. I for one would like to see a bill the President would sign. And in all candor, if he does not sign it, that we would put into law anyway. But my first preference is that it be a cooperative effort.

We have seen the bill denounced from time to time by the Administration, and we have seen foreign emissaries coming over here counseled by the Administration that this is an extremely protectionist measure.

I was meeting with the European parliament for a day, a number of us were, and they said all the nice things, but the innuendos were that they would really be watching us. There was a strong inference that it was obvious we were going to pass a very protectionist piece of legislation. I couldn't help but remember one of the quotes from the Administration strongly criticizing one of the provisions that Senator Hollings put in the bill, as I recall, regarding the question of calculating dumping margins. The gentleman who had made the comment, representing the European parliamentarians, was talking about how they watched us, and I said, "you know, we watch you too." I advised him that one of the things we are criticized most for, that particular Hollings provision, was taken from the Europeans. So I think we have to have a balanced viewpoint on this thing.

We do want your help, and we will look forward to working with you.

Let me ask you, what would be the division of authority between the other Deputy USTR and you, in Washington, between you and Mike Smith?

Mr. HOLMER. We still need to work that out. It depends on large part on what your schedule is with respect to trade legislation. Ambassador Yeutter has made it clear to me, as he had to Ambassador Woods, that throughout the course of the trade legislative process in the Congress that was Ambassador Woods' priority and it will be my principal priority. And if that process can be taken care of by November 1, or Thanksgiving, then at that point Mike Smith and I will need to divide up the responsibilities among the bilateral negotiations that we have.

But it depends a lot on what the schedule is with respect to trade legislation. If that slips into December and January and February and March, I will focus much more on that activity and much less so on the multilateral/bilateral negotiations.

The CHAIRMAN. Thank you.

Senator Packwood, do you have any further comments?

Senator PACKWOOD. No questions, Mr. Chairman.

The CHAIRMAN. Senator Moynihan, do you have any further comments?

Senator MOYNIHAN. I would like to take this occasion to say that we are all much interested in the progress of the negotiations with Canada. And perhaps, Mr. Holmer, you have some news. We are

awaiting a midnight cable from Ottawa that says that Mr. Reeseman might be returning.

Senator PACKWOOD. I would like to admonish him, however. Don't say anything too sensitive. If you can answer that question appropriately. But I would not want to blow the whole thing with an inappropriate answer.

Mr. HOLMER. It looks like a pretty full table over there [gesturing to the press table]. The talks, obviously, Senator Moynihan, are at a delicate stage.

Senator MOYNIHAN. Are there talks?

Mr. HOLMER. Well——

Senator MOYNIHAN. Don't answer; secret talks. [Laughter.]

I got it. The secret talks are at a delicate stage. Thank you, Mr. Holmer. [Laughter.]

Mr. HOLMER. The Canadians, as you know, from press reports, left the negotiating table a week ago today. There were Cabinet-level talks on Monday. There are continued communications between the two governments. Whether talks will resume or not, Senator, I do not know, as of at least 30 minutes ago.

Ambassador Yeutter will be up at 10 o'clock tomorrow morning to meet with the committee in a closed session and he will be able to lay out exactly where everything is with respect to the negotiations. But that is about all I can say at the present moment.

Senator MOYNIHAN. I hope that you are thinking beyond, what, Saturday midnight. Isn't that the——

Mr. HOLMER. Saturday midnight is the legal time by which the President must notify the Congress if he intends to enter into an agreement.

Senator MOYNIHAN. Thank you.

The CHAIRMAN. Senator Matsunaga, any comments?

Senator MATSUNAGA. Thank you, Mr. Chairman.

I am pleased to join in support of Mr. Holmer. Having served as counsel to the former Chairman, now the ranking member, Senator Packwood, you know I am sure what the goings-on here are. And I think it is a distinct advantage for the Committee to have a person like you to be dealing with. I might ask, now that you are coming before this Committee to be confirmed, do you have any confirmation conversions? [Laughter.]

Senator MOYNIHAN. Do you want to answer?

Mr. HOLMER. I am at a delicate stage of negotiations on that subject.

Senator MATSUNAGA. But behind closed doors I hope you will be able to tell us what is going on with the United States-Canada trade negotiations.

Mr. HOLMER. Certainly, Senator.

The CHAIRMAN. Have you finished?

Senator MATSUNAGA. Yes, Mr. Chairman.

The CHAIRMAN. Senator Danforth.

Senator DANFORTH. Mr. Holmer, I am sorry to say that I walked in during, I supposed it was Senator Moynihan's questions, and I may be going over the same ground, but I have to say that just based on what I am reading in the papers, I am concerned about what may be happening between the United States and Canada on trade negotiations. The paper says that meetings were held on

Monday involving Secretary Baker and Ambassador Yeutter. Are they doing the negotiating personally?

Mr. HOLMER. There was a meeting on Monday between Ambassador Yeutter and Secretary Baker, and three Cabinet level people on the Canadian side. Derek Burney, the Chief of Staff to the Prime Minister; Finance Minister Wilson; and Trade Minister Carney. And they did discuss all the issues in the negotiation.

Senator DANFORTH. They did?

Mr. HOLMER. Yes, Senator.

Senator DANFORTH. Is it fair to say that Secretary Baker has gotten into the midst of these negotiations feet first?

Mr. HOLMER. Well, Secretary Baker is, as you know, Chairman of the Economic Policy Council. He has been involved in the negotiations and the strategy with respect to the negotiations throughout. Some of the issues that are involved in the negotiations are ones that are a direct responsibility to the Treasury Department, particularly the investment issue. And it seemed to us reasonable for him to play an active role with respect to those negotiations.

Senator DANFORTH. Well, of course, my concern is that the tactic of walking out of meetings is going to prove to be just a marvelous tactic for negotiating with the United States, and that the result of that is that suddenly Peter Murphy is, in effect, replaced by Secretary Baker and Ambassador Yeutter, and that our response to the Canadians walking out of the meeting will be, well now that you put it this way, of course, you are right. And that with respect to dispute settlements, we will end up caving in and getting very little in return. And then having concluded the negotiations, the Administration will then come to Congress and say, well, this is a matter of grave foreign policy implications with our good friends, the Canadians, and we cannot possibly turn down this deal. It is too late. It would embarrass the Administration and be a major event between the United States and Canada.

So my concern is that, you know, to use the vernacular, we are whimping out in negotiations with Canada.

And I must say that this article in this morning's Washington Post, and another one that was in the paper yesterday or the day before, are not the kinds of things that encourage me that we have a good strong negotiating policy. It seems to me that in just from reading this that Peter Murphy has—I am sure he is there, sitting there—but that basically this has been bucked up to Clayton Yeutter and Jim Baker, and that they are being most accommodating.

I have great respect for Mr. Murphy as a negotiator. I think he is a good tough negotiator. But maybe in this case, when the going got tough, the tough got going. And the thoughts got coming.

So can you allay my concerns on this matter?

Mr. HOLMER. Well, in part. And I can only do it in part today because obviously, Senator, this is a public session and there is only so much I can say in a public session about the details of a negotiation; that if there is a negotiation going on right now—and we do not know yet whether or not any talks are going to resume at any level at the present moment——

The CHAIRMAN. Let me intervene if I may on that, because of the delicacy of the negotiations. First, let me say to my colleague from Missouri that I strongly agree with him as far as high regard for

Peter Murphy, an able negotiator. I also believe when it reaches this stage that you do bring in higher authorities. You have got the Prime Minister on the one side. Certainly you should have Secretary Baker on our side. But I think Peter Murphy, in his vast experience in these negotiations, is very valuable to the process and must remain a part of the process.

Now let me further add to my colleagues here, that we will have an executive session tomorrow with Mr. Clayton Yeutter to discuss this very issue, Canadian negotiations, and in addition to that, the format of the Mexican agreement. So we will have a chance to go into it in some depth tomorrow.

Senator DANFORTH. Mr. Chairman, I appreciate that. And I understand that maybe Mr. Holmer is necessarily restrained in what he can discuss with us. On the other hand, the stories in the press are public and that is all I have to go with right now, is what has been publicly reported. And if these negotiations are ongoing and they—when is the deadline?

Mr. HOLMER. Midnight Saturday.

Senator DANFORTH. Midnight Saturday. So obviously between Wednesday and Thursday, when the deadline is midnight Saturday, a great deal can be dropped on the table. And I just want to say to Alan Holmer, I have tremendous respect for him. I mean, there is absolutely no doubt, as you know, that I support you. You have encouraged your present role. But I want to say to you as a representative of the USTR and of the Administration, I am really concerned because I can hear the oratory when this deal is presented to Congress that anybody who raises a concern about it is anti-Canadian, the anti-Administration doing terrible things to our wonderful friend and neighbor.

But if the idea of negotiations is to buckle when somebody does a trumped up walk out from the negotiations, as Mr. Reeseman did—it was an act; it was theatrical—if that is what it takes to win in a negotiation against the United States, and if our negotiator has been, in effect, ousted by Secretary Baker and Mr. Yeutter, and if Secretary Baker and Mr. Yeutter are busily fawning over the Canadians saying yes to everything, particularly on the dispute mechanism side, and getting virtually nothing in response except a little window dressing, I can foresee that we are going to be in one terrible predicament around here because we are going to be called on to rubber stamp a terrible deal as far as the United States is concerned for the sake of not offending the Canadians who have extracted this thing from us.

Mr. HOLMER. Mr. Chairman, if I could respond just briefly. And I will be very careful based on your and Senator Packwood's admonitions.

The CHAIRMAN. Yes, Mr. Holmer.

Mr. HOLMER. There is not a situation where Ambassador Yeutter or Secretary Baker are or have wimped out. Ambassador Murphy is still very actively engaged in all of the tactical decisions that are being made. I think it is an excellent framework that the Chairman has set up for the session tomorrow morning. It won't be just Ambassador Yeutter. Ambassador Murphy will also be here. And they can lay out where we are on virtually all the issues what may be the framework of a possible agreement. And we very much want

the candid reaction of this Committee before we go into the last final stages of those negotiations—if the negotiations do resume.

It seems to me this is precisely the kind of consultation exercise that we ought to have in the making of an agreement with Canada if there is to be an agreement.

The CHAIRMAN. Had you finished, Senator Danforth?

Senator DANFORTH. Yes, Mr. Chairman. Thank you.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. Mr. Chairman, I would not want Mr. Holmer to return downtown without hearing that there are more than one view of the events that have taken place. And it seems to this Senator that a certain amount of escalation of the bargaining toward the end of the long negotiations is very normal, perfectly normal. I mean, in the end, this will be a decision between the Prime Minister and the President. As it began, it will end conclusively otherwise at that level.

Second, there are no two nations on earth where dispute settlement mechanisms are more established or more appropriate or more successful. Our boundary commission is the wonder of the world, or ought to be. And both the President and Mr. Mulroney have drawn attention to it.

The Great Lakes Commissions, the whole range of areas which have made the relationship between the United States and Canada a singular one, we can point to with great pride on both parts. And I want it understood, sir, that if a dispute settlement mechanism is put in place, there are people here who will be very strongly in favor of it. And we do not think of the—well, it is a new thought to say that this Administration is wimpish, but then, you know, maybe it is something that we will have to revisit. I doubt it.

And I want you to hear that this is a Senator who thinks that we have a generational opportunity.

Mr. Chairman, as we said when this first came up, the first time this was proposed was 1910 between President William Howard Taft and Prime Minister Laurier. And in four months, because of things that were said down here—Champ Clark stating that an agreement was the next to the last step to annexation and "no truck or trade with the Yankees" in Ottawa—the Laurier Government fell. The Prime Minister has a hotel to show for himself in Ottawa, but that is all. It took 75 years before the Canadian Prime Minister felt he was in a position to do this again. And a generational opportunity could be lost in the next four days. And I hope you will be mindful of it—I know you are—and I want you to know that if you are trying to reach arrangements where the United States and Canada settle disputes between themselves, you have friends on this Committee, sir. Thank you.

Senator BAUCUS. Mr. Chairman.

The CHAIRMAN. Senator Baucus.

Senator BAUCUS. Mr. Chairman, I think the Senator from New York is correct when he speaks of a generational opportunity that might be lost if we don't work assiduously here to reach an agreement. But I want to make it clear that the generational opportunity has to be a sound economic result.

I am a bit dismayed that the Canadians are chagrined in dealing with Peter Murphy because he doesn't have political stature. And

we all know the Presidents and Prime Ministers tend to apply window dressing to international agreements. They want to look good in this media age. And too often the underlying agreements aren't as good as they appear to be on the surface.

I think it is encumbent upon Ambassador Murphy, Ambassador Yeutter, Mr. Reeseman, and this Committee, the counterparts in the House, to make sure we have a solid economic agreement.

I think that more and more the foreign policy in this country is going to be driven by economic policy. More and more. That is the wave of the future. And an agreement, for the sake of agreement, is not going to work out unless it is a solid economic agreement in the best interest of both sides.

The fact is that our trade has been increasing with Canada for the last several years over $5 billion annually without a free trade agreement. It has been increasing substantially without a free trade agreement. So if we don't have an agreement because it is not a good agreement, I frankly think the result will be more trade with Canada because that has been the trend, without an agreement, rather than less trade with Canada.

As businessmen, economic entities want to trade and they will trade if they can get a good deal. And that will continue to be the case.

I also want to sound a warning about any dispute settlement mechanism. It is true the Boundary Commissions have worked because the applicability of their decisions is entirely discretionary; at least the Transboundary Water Commission, the IJC, the International Joint Commission are entirely discretionary. There is no binding recommendation on the part of the IJC; none, zero. And what I hear, frankly, in the back talk and the rumor mill is that this Administration is starting to agree to, agree with, you know, a binding dispute settlement mechanism. And, frankly, that is going much further than the present IJC. And I strongly encourage our negotiators to not go in that direction of a binding dispute settlement mechanism unless we are getting a proportionate agreement on our side that has helped us as much as a binding dispute settlement mechanism might help them.

I am very nervous about a binding dispute settlement mechanism. And there are various ways to do it.

Senator PACKWOOD. Can I just say one thing? You can take a poll here. I like the binding dispute settlement procedure if it is a fair one. And I know I can speak for at least one other Senator on this that has mentioned it to me. So you might as well wait and come to us tomorrow, and obviously there is a split. But this is not an all one-sided issue. And I am willing to risk the acceptance of a fair settlement procedure.

The CHAIRMAN. I have read a lot of statements from the Canadians saying that there will be no returning to the bargaining table unless the Americans come up with some new concessions. Let me say "no returning to the bargaining table unless both sides come up with some new concessions." This is a two-way street and it has to be mutually beneficial. Unless it is, we would be much better off with no agreement than a bad agreement. That means it has to be one that frees up trade on both sides, and that the protectionists on

both sides lose, and that we promote greater trade and freer trade between these two great nations.

If there are no further comments, Mr. Holmer, we are pleased to have heard you. I would say to my colleagues on the Committee that we have Mr. Chapoton and Mr. Meagher also, and if there are no objections, I would like to try to see if we can't get a vote on all three this morning and try to get a quorum here.

Senator PACKWOOD. Mr. Chairman, just a moment. If I could take this chance to introduce Alan's wife, who I have known for a good many years—I see her in the audience—Joan Holmer. I should say Dr. Joan Holmer, Professor of Shakespear at Georgetown University. Joanie, it is good to have you with us.

Mrs. HOLMER. Thank you, Senator Packwood.

Senator DURENBERGER. Mr. Chairman.

The CHAIRMAN. Senator Durenberger.

Senator DURENBERGER. Good morning.

The CHAIRMAN. I did not see you come in.

Senator DURENBERGER. This is just a coincidence that I too wanted to say something good about Joanie because she was a straight A student at the University of Minnesota, and she was also homecoming queen, as you can tell [Laughter.]

The CHAIRMAN. Hear, Hear.

Senator DURENBERGER. And a lot of other neat things that make me very proud of her as a Minnesotan. And I have known Alan for, I guess, six, seven years now, something like that, from the old intergovernmental relations days, and a variety of other things, and watched him grow along with everyone else around here. And I am pleased to see both of them here today.

The CHAIRMAN. Well it is obvious Joan would be confirmed, and, Alan, we——[Laughter.]

Thank you very much.

Mr. HOLMER. Thank you, Mr. Chairman.

The CHAIRMAN. Our next nominee would be Mr. Don Chapoton to be Assistant Secretary of the Treasury.

Mr. Chapoton has been recommended for the position of Assistant Secretary for Tax Policy for the Treasury. That is the Treasury's top tax post. Mr. Chapoton is currently acting in that position. He is a graduate of the University of Texas Law School. He was a law clerk to Judge Brown, of the Fifth Circuit Court of Appeals, and for more than 20 years was an attorney with the firm of Baker and Botts, in Houston.

In mid-1986, Mr. Chapoton joined the Treasury Department as deputy to the Assistant Secretary, Roger Mentz. He certainly worked closely with the Congress last year on the tax bill.

Mr. Chapoton is a personal friend. I know him to be a man of integrity and ability and good judgment. And we are delighted to have you here, Mr. Chapoton.

We have had a family of Chapotons. This is the one with the mustache. We have enjoyed working with all of them.

Are there comments from any members of the Committee?

[No response.]

The CHAIRMAN. If not, Mr. Chapoton, we are prepared to receive any statements you have.

STATEMENT OF O. DONALDSON CHAPOTON TO BE AN ASSISTANT SECRETARY OF THE TREASURY

Mr. CHAPOTON. Mr. Chairman, I would like to only make a brief statement and then I would be happy to answer any questions that the members of the Committee might have.

I would just like to say that it is a real honor for me to appear before this Committee in this capacity with the opportunity of being confirmed in this position.

As the Chairman indicated, I have practiced tax law for more than 20 years, and during this time I have had the opportunity upon occasion to work with members of this Committee and the staffs of this Committee, and I, therefore, have known first-hand for a number of years the professionalism and dedication with which this Committee and its staff approaches problems of tax law. Thus, it was a real pleasure for me when I had the opportunity to join the Treasury Department last year. It was particularly exciting because of the changes to the tax law, the Tax Reform Act of 1986.

If this Committee and the Senate should see fit to confirm me, it would be my hope that the Treasury Department could continue its close working relationship with this Committee for the purpose of developing sound tax policy, which I think has historically been done through a close working relationship. I would like very much to continue that.

The CHAIRMAN. Let me say, Mr. Chapoton, over the years we have generally had a substantial amount of participation by Treasury when it comes to the writing of tax law. In many years past, they wrote it, period, and sent it up here. But recently we have not had that participation to that degree. And in many instances I know it was because of higher authority, denying the authority to the person who held your post in the past.

Frankly, we want that participation. There are things that the Executive Branch can give us, whether we decide to follow that advice or not, that help inform us and provide us with more information on which to exercise our judgment.

We have seen a situation recently, in particular, with the federal deficit where Treasury has not sent us anything to try to help correct that, at least in part, by revenues. And from some of the statements we heard yesterday down at the White House, we still may not have that kind of support out of Treasury. And you are in an awkward position to answer a policy question on that, so I guess I will not ask that of you.

But I must say to you that we would like very much—we are faced now in this Committee with the reconciliation and raising some revenues—and we would like very much to have the advice and the counsel of Treasury in that process. It doesn't do much good to stand off to one side, and then when we get through, decide that is not something that the Executive Branch or the Administration wants, and they have not participated at all in the process.

If we could work it out in a cooperative manner rather than a confrontational manner, the system just works better. And usually we end up with better legislation.

Mr. CHAPOTON. Mr. Chairman, if I might just comment on that.

The CHAIRMAN. Yes.

Mr. CHAPOTON. Obviously, there are constraints to our dealings, but I agree completely that the close working relationship that we have had in the past does produce better tax legislation, and it would be my hope that we can offer some help. The President has submitted some revenue items in his budget, and there are compliance matters, trust fund reforms and matters of that sort, which we perhaps could work together on to achieve some meaningful objective.

The CHAIRMAN. Perhaps we can even talk about revenue enhancers.

Are there other comments concerning this nominee? Senator Packwood.

Senator PACKWOOD. A question. Yesterday, Mr. Chapoton, at the White House signing ceremony on the Gramm-Rudman-Hollings bill, the President was very grumpy, in essence, saying we have to extend the debt ceiling, and for that I am forced to swallow this other part of the bill. And I noticed yesterday, however, after that testifying for the World Bank, he cites this as evidence that we are not backing down from our responsibilities, and we are going to use this bill to get the deficits down.

This Congress does want to participate with the President, but I don't know if Jim Miller knows exactly what it is the President wants. If he wants a $23 billion sequester, and if he is going to say he will veto any new taxes, revenues, or call them what you want, if you tell us that now, you will save yourselves and us a lot of heartache and trouble. I don't think the Congress is going to pass a tax increase over the threat of the President's veto. I don't think we could override the veto and I doubt if we do it.

I am willing to support revenue increases, taxes, call them what you want, as part of a package, but I think the President is going to have to decide, and you are going to have to advise him at least if he is willing to accept revenues, what is doable, as to which way he is going to go. And we don't know.

I look at the revenue package that the President has of about $6 billion, and I think 2 to 2.5 billion dollars of it might be acceptable to Congress in his miscellaneous user fees and whatnot. And beyond that, the sooner the Administration makes a decision, the easier it will be for all of us.

Mr. CHAPOTON. I understand, Senator. I think that, as I indicated to the Chairman, there might be other matters of the sort that are in the President's budget that we could discuss that are not revenue raisers, and perhaps there is some fertile ground there. But if not, I understand your point, and I think that you have made it very clearly. We will have to keep that in mind as these discussions go forward.

The CHAIRMAN. Are there further comments? Yes, Senator Moynihan.

Senator MOYNIHAN. Mr. Chairman, I simply would like to welcome Mr. Chapoton on this pleasant, happy occasion, to note, of course, as you did, that the other Chapoton is in the room, but also one of your more immediate and equally distinguished predecessors, Secretary Mentz. And I would like to welcome him to this chamber.

And might I just make one question and one statement? Earlier, in July, Senator Dole and I wrote to the Secretary asking about this whole question of the taxing of phantom income of mutual fund shareholders, who will have a portion of a mutual fund's administrative expenses passed through to them as imputed income. One of the key issues here—and we have a bill in on this, S. 1489—one of the key issues is just what percentage of a mutual fund's expenses is the Treasury going to suggest is the portion that should be ascribed to the shareholder? And I hope you will get an answer to us because we are going to find, if I may say to my colleagues, an awful lot of surprised people arund the country who thought they were getting, you know, *x* amount of income from an investment, and finding themselves being taxed on x plus y, and not really quite prepared for that. And it does not make a lot of sense, at least to some of us. We might hope for an early answer.

Mr. CHAPOTON. Yes, Senator, I understand. We are addressing that issue. We, of course, did receive your letter. And again, it is a tough question. But I think the law is clear that—at least in my mind it is clear—there is no contemplation of a hundred percent inclusion of the expenses of a RIC.

Senator MOYNIHAN. Well somewhere in between zero and a hundred.

Mr. CHAPOTON. But trying to determine what percentage or how we calculate what expenses should be in there or should not be has been difficult. Though I think we are very far along on that, and we should have an answer soon. We certainly want it to be in time for any consideration that you or any other members of this Committee might want to give.

Senator MOYNIHAN. Right. I believe the industry has given you a suggestion of 22 percent, but you will have to decide.

Can I then say, Mr. Chairman, that I think all of us have read of the distress that has been occasioned by the assertion that in the Tax Reform Act of 1986 the Congress intended that writers' expenses—the expenses of researching and writing books—be spread out over the lifetime income from the book, as if we were talking about a factory or a product line with an income stream. Mr. Bradley and I, along with the Authors Guild, have met with Mr. Chapoton and his associates on this. And Mr. Chapoton has been very forthcoming and wants to get this resolved.

There is a footnote in the Committee Conference Report that says the Uniform Capitalization Rules apply to authors and books. And we cannot find it in the law. We certainly never intended it—we cannot find anybody in the Committee that intended it. Neither, mysteriously, can we find the person who wrote the footnote. Nevertheless, this may require some technical legislation. And Mr. Chapoton has been very supportive in this matter and I would like to state how much I appreciate it.

Mr. CHAPOTON. Thank you, Senator.

The CHAIRMAN. I would also like to comment, Mr. Chapoton, on the fact that Treasury does not seem to have as much concern about the deficit as I think it should. I look at the situation on the allocation of R&D expenses on foreign incomes, Section 861. The Treasury has proposed a compromise on that which would cost us several billion dollars over three years, and yet has not matched

that up with any attempt or recommendations insofar as obtaining the revenue to balance the loss. I really do not think that is a constructive role for Treasury to play. I think they ought to face up to that responsibility and not, frankly, just pass the buck.

I think this deficit is of paramount concern. And if you would like to address that, I would be happy to hear it.

Mr. CHAPOTON. Mr. Chairman, that R&D provision is, as you know, both the R&D allocation provision and the R&D tax credit. Both are specified to expire shortly after the enactment of tax reform. The R&D allocation expired this past August, and the R&D credit will expire at the end of next year, I believe.

Therefore, we had to address that in some fashion. I think it was contemplated by Congress and certainly by the Administration that while that issue was not finally addressed in tax reform, that it was not really thought by anyone that it would be allowed to fully expire and go back without any stated allocation. At least that was the way we interpreted it and we got a lot of indications from the Hill that that was the case.

So, simply, what we tried to do there was to work out a method, an agreement, that would be acceptable to this Committee and to the members of Congress. We did include that in coming up with what we thought was an acceptable compromise on that issue. It was included in the mid-session review of the President's budget, and was paid for in the sense that it was included with the items that do raise some revenue that were already in that budget. And, in fact, there are some others that increase revenues slightly that are clear corrections, such as the ESOP correction that was apparently a mistake. And I am not saying that was——

The CHAIRMAN. Everybody grabs that one.

Mr. CHAPOTON. Everybody uses that money.

The CHAIRMAN. Yes.

Mr. CHAPOTON. I realize that, Mr. Chairman. We are not trying to grab that money before anyone else. It is simply that——

The CHAIRMAN. You have to get in line for that.

Mr. CHAPOTON [continuing]. That and several other items. There was funding in the mid-session review to pay for these items. Now there is some disagreement whether that is adequate and whether it further increases the deficit. But at least to that extent we did pay for it. We did feel, though that we had to address that issue. Tax reform contemplated that we should.

The CHAIRMAN. Senator Matsunaga, you had a comment.

Senator MATSUNAGA. Thank you, Mr. Chairman.

First, I wish to congratulate you, Mr. Chapoton, upon your nomination. I don't think you will have any difficulty in getting the approval of this Committee or the Senate. However, I would like to ask you what your position is relative to tax credits as incentives for the development of alternative energy. Under the previous Administration, we had a very strong program designed to make the United States energy self-sufficient through development of alternative sources of energy. We were going to use Hawaii as the first example of what can be done to a State which is 100 percent dependent upon imported oil and convert it to 100 percent self-dependency by use of indigenous alternative sources.

Now, since the Reagan Administration came to office, every budget has recommended the elimination of the tax credits. And we have had to fight it all the way. Fortunately, both the Senate and the House have consistently supported renewable energy legislation which I introduced quite a number of years ago.

I am hoping that you will recommend to the President that this is a sound program. It has resulted in the expansion of existing industry and the opening of new industries in the research and development of alternative energy. Just to cite you an example, before the tax incentives were enacted into law, on the big Island of Hawaii, 100 percent of the electricity was being produced by imported oil.

After we gave a 15% tax credit for the burning of biomass, within five years, 40 percent of the electricity produced was produced by the burning of biomass. Sugar cane waste had previously been dumped into the ocean. And on the Island of Kauai it is 50 percent from burning of sugar cane waste. And what made them do that? I consulted with them and asked, "What will it take to get you to burn the waste, produce steam, to generate electricity instead of dumping the waste in the ocean?" The responsiveness. "If you can give us a tax credit we will make the necessary capital investment to build a plant to produce the bagasse fuel pellets". And that is what we did.

We had planned two 1000 megawatt ocean thermal energy conversion plants (OTEC) for the big Island, one of which could have been used to produce liquid hydrogen. Lockheed had expressed great interest and a willingness to produce liquid hydrogen burning airplanes. One of the 1000 megawatt plants was intended to produce liquid hydrogen, but when the Administration recommended no tax credit for development of ocean thermal energy conversion, Lockheed withdrew its plans.

You see, this is a type of forward looking planning in our economy that needs to be done. As Dean Griswold at Harvard Law School used to say, "Taxation should be used to engineer social and economic objectives." And I wish you would have that philosophy with you so that we can do something, using taxes for the purpose of economic development. Thank you.

The CHAIRMAN. Thank you.

Let me say I am losing members and I have a quorum.

Senator DANFORTH. May I make just one statement, Mr. Chairman?

The CHAIRMAN. All right.

Senator DANFORTH. Mr. Chapoton, now that your predecessor, Mr. Mentz, is in the audience, and your predecessor's brother is also in the audience, and I would like to note that he will be able to tell you all that you will need to know about the completed contracts. [Laughter.]

The CHAIRMAN. You don't need to comment on that, Mr. Chapoton, at this moment.

[Whereupon, at 10:56 a.m., the hearing was concluded.]

[Article from the Washington Post dated Sept. 29, 1987:]

80-281 (32)

Canada Cautiously Optimistic on Trade Talks

By Herbert H. Denton
Washington Post Foreign Service

TORONTO, Sept. 29—Canadian officials expressed guarded optimism tonight about the progress of trade talks with the United States but indicated that they want further negotiations to continue between cabinet-level officials of both countries.

Prime Minister Brian Mulroney and his 15-member inner cabinet met behind closed doors for most of the day and into the evening to consider new proposals offered to them Monday in meetings in Washington with Treasury Secretary James A. Baker III and U.S. Trade Representative Clayton K. Yeutter.

"The government believes there was movement in the talks [Monday] to warrant further political consultations," Canadian Trade Minister Pat Carney said in a statement in Ottawa this evening. "There will be ongoing communication on this issue."

Canada's chief trade negotiator, Simon Reisman, stalked out of formal bargaining talks in Washington last Wednesday, declaring that American obstinacy made it unlikely that any deal could be struck by the Oct. 4 deadline set by Congress.

Reisman returned to Ottawa where he has continued to express pessimism in press conferences and on television.

In the meantime, the bargaining moved to a higher level, with Baker and Yeutter becoming directly involved.

Carney, speaking for the Canadian cabinet tonight, indicated that government leaders here want the talks to continue at the higher level for the time being. They gave no indication whether or when Reisman and his U.S. counterpart, Peter Murphy, might sit down at the table again.

The leaders have long regarded Baker as pivotal to any successful deal.

Although sen. Canadian officials deny that Reisman's walkout was a tactical ploy, they acknowledged their happiness that Baker is now involved and confess a certain chagrin at having to deal with Murphy, who is without political stature.

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